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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/863,124	05/22/2001	Jason Ashton	20574000110	9581

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EXAMINER

THEIN, MARIA TERESA T

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 10/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/863,124

Applicant(s)

ASHTON, JASON

Examiner

Marissa Thein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-24 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 and 25-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 May 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Claims 1-10 and 25-38 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 9, 2005.

Applicants' election with traverse of Group II, claims 11-24 in the reply filed on May 9, 2005 is acknowledged.

Drawings

The drawings filed on May 22, 2001 are acceptable.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 11-24 are rejected under 35 U.S.C. 101 because the claims do not provide an end result thus failing to provide a useful, concrete and tangible result. The claims cannot be viewed as providing a concrete result since the method steps themselves fail to provide a definitive result that the skilled artisan would recognize as to managing a bidding.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 11-12, 14-22, and 24 rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,216,114 to Alaia et al.

Regarding claims 11-13, Alaia discloses the process of virtual presence of the parties until no bidding has taken place for a predetermined amount of time (col. 9, lines 29-32; col. 12, lines 52-54; Figure 11); the process of virtual presence of the parties ending the predetermined timed out end of bidding until the bedding stall time has elapsed (col. 13, lines 1-25; Figure 11; Figure 13; col. 16, lines 42-61; col. 17, lines 14-23); and the notification process of assuring virtual presence between parties exchanging information across multiple platforms for instant message purposes (col. 26, lines 55-62; Figures 15A-15B).

Regarding claim 14, Alaia discloses a method of managing bidding in a computer facilitated auction, comprising: pre-determining a time for ending bidding in computer facilitated auction (col. 9, lines 29-32; col. 12, lines 52-54); determining a stall time period (col. 9, lines 16-18; col. 11, lines 14-25; col. 11, lines 61-67; col. 13, lines 1-25; Figure 11; col. 13, lines 27-39); receiving a bid (col. 12, lines 52-54; Figure 11); and automatically extending the time for ending bidding using the stall time period and responsive to receiving the bid (col. 13, lines 1-25; Figure 11); and ending the auction after no bids have been received for a length of time equal to at least the stall time period (Figure 13; col. 16, lines 42-61; col. 17, lines 14-23).

Regarding claims 15-16, Alaia discloses receiving another bid and again automatically extending the time for ending bidding (Figure 11; col. 13, lines 18-25); and wherein ending the computer facilitated auction occurs when no bids have been received for a length of time equal to at least the stall time period and the pre-determined time for ending bidding in the auction has passed (col. 12, lines 26-40; col. 13, lines 1-25; Figure 11).

Regarding claims 17-21, Alaia discloses notifying a bidder of the extended time for ending bidding; notifying a bidder of a new high bid; the notification being sent through a plurality of different types of communication channel; the notification being made through a wireless network to a receiving device, the receiving device being configured for the inquiring party to make another bid using the receiving device; the receiving device being a mobile telephone, an internet connected phone or a wireless personal digital assistant, and the receiving device being configured for the bidder to place another bid using the receiving device (col. 3, lines 50 – col. 4, line 14; Figures 3-4; Figures 6A-6B; Figure 7B; col. 16, lines 47-53).

Regarding claim 22, Alaia discloses automatically notifying a plurality of bidders of the extended time for engine bidding, the notification being made through a computing network (Figures 3-4; Figure 6A-6D; col. 4, lines 24-53).

Regarding claim 24, Alaia discloses a computing system configured for managing an auction, the computing system comprising: means for pre-determining a first time for ending bidding in the auction (col. 9, lines 29-32; col. 12, lines 52-54); means for determining a stall time period (col. 9, lines 16-18; col. 11, lines 14-25; col.

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11, lines 61-67; col. 13, lines 1-25; Figure 11; col. 13, lines 27-39); means for receiving a bid at a bid time (col. 12, lines 52-54; Figure 11); and means for notifying bidders of the received bid, the notification including a second time for ending bidding the auction, the second time for ending bidding in the auction being at the bid time plus the stall time period or later (col. 3, lines 50 – col. 4, line 14; Figures 3-4; Figures 6A-6B; Figure 7B; col. 16, lines 47-53; Figures 15A-15C).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over 6,216,114 to Alaia et al. in view of U.S. Patent No. 6,557,029 to Szymansky.

Alaia substantially discloses the claimed invention, however, Alaia does not explicitly disclose the instant messaging. Alaia discloses a message being sent to every bidder (col. 26, lines 57-58). The auction coordinator types in a text message and sends it to each bidder over the same network that is running the auction. Messages boxes appear on bidding screen and bidders must click "OK" before they can continue.

Szymansky, on the other hand, teaches instant messaging (col. 5, lines 7-8).

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Alaia, to include instant

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messaging, as taught by Szymansky, in order to distribute messages over a communication network in real time (abstract).

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,727,165 to Ordish et al. discloses a matching system having item match acknowledgement.

U.S. Patent No. 6,058,379 to Odom et al. discloses a real-time network exchange with seller specified exchange parameters and interactive seller participation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 571-272-6764. The examiner can normally be reached on M-F 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alex Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Mtot
October 16, 2005

A handwritten signature in black ink, appearing to read "S B McAllister".

STEVE B. MCALLISTER
PRIMARY EXAMINER